

Notice of Allowability	Application No.	Applicant(s)	
	09/705,149	SWAIN ET AL.	
	Examiner	Art Unit	
	Bao Qun Li	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to _____.
2. ☐ The allowed claim(s) is/are _____.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
|--|--|

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EXAMINER'S AMENDMENT

Response to the amendment

The amendment filed on 08/22/2006 has been acknowledged. Claim 15 has been amended. Claims 1-14, 18-21, 27-30 and 35-51 have been canceled.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Vid Mohan-Ram on 11/09/2006 and Burrous Beth on 11/13/2006.

The application has been amended as follows:

Specification: In line 1-2 of page 17, please ^{delete} "following internet address:
<http://www.ncbi.nlm.gov/cgi-bin/BLAST>" and insert --- NIBI internet website ---

Please cancel claim 52.

Claims 15-17, 22-26 and 31-34 are allowed.

2. The following is an examiner's statement of reasons for allowance: The claimed invention is drawn to a method for eliciting an immune response by a gold core particle coated with a vector construct that carries HSV genomic DNA fragment(s) consisting essential of HSV immediate early genes ICP0, ICP4, ICP22 and ICP27, wherein the DNA fragment(s) is collectively about 5-25 kilobase in size packaged in a plasmid vector or about 25-50 kilobase in size packaged in a cosmid vector. Applicants submit that the present invention is an unexpected result since they found that the immune response induced by said genomic fragments is unexpectedly superior to that seen with plasmid comprising only the HSV antigen glycoprotein coding sequences alone (Response filed on 08/22/2006). The amendment of the claim 15 to the specific HSV IE regions overcomes the rejection as applicants argue that the cited prior art only teaches to use almost full size of the HSV genome (158 kilobase), and it does not teach or suggest to use one third of the HSV genome that only expresses the four immediate early genes of ICP0, ICP4, ICP22 and ICP27.

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3. State of art priori to the current application was filed and till today does not teach or suggest to maintain or use HSV immediate early genes in HSV vector or HSV DNA immunization. In fact, they all teach to delete one or all these ICP genes (Lorna et al. J. Virol. 1998, Vol. 72, No. 4, pp. 33-7-3320, Watnabe et al. Virol. 2006, Vol. 1, pages 1-13, US 5,851,826, US 6,533,090B1 and US 6,642,207B1).

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Qun Li whose telephone number is 571-272-0904. The examiner can normally be reached on 6:30 am to 3:30 pm.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Bao Qun Li
11/13/2006

**BAOQUN LI, MD
PATENT EXAMINER**



**BRUCE R. CAMPPELL, PH.D
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